LAW REFORM
COMMISSION
OF
NOVA SCOTIA

Seventeenth Annual Report
April 1, 2007 to March 31, 2008

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OF
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SEVENTEENTH ANNUAL REPORT

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The Law Reform Commission of Nova Scotia was established by the Government of Nova Scotia under the *Law Reform Commission Act*, S.N.S. 1990, c.17. It began operation in 1991.

The Commissioners for 2007-2008:

Anthony R. Chapman, President
Thomas A. Cromwell
Diana Ginn
Darlene Jamieson
John L. McMullan
E. Arleen Paris
Kevin Coady (December 2007)

The Commission staff in 2007-2008:

John E.S. Briggs
Executive Director and General Counsel

William H. Laurence
Legal Research Counsel

Krista Tinslay
Administrative Assistant

The Commission offices are located at:

1484 Carlton Street
Halifax, Nova Scotia
Canada B3H 3B7
Telephone: (902)-423-2633
Fax: (902)-423-0222
E-mail: info@lawreform.ns.ca
Website: www.lawreform.ns.ca.

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The Commission gratefully acknowledges this financial support.

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A. OVERVIEW OF THE LAW REFORM COMMISSION

The Law Reform Commission of Nova Scotia was created by the Government of Nova Scotia under the *Law Reform Commission Act*.[1] The Commission consists of between five and seven Commissioners (there are currently six), an Executive Director and legal research and administrative staff. The Commission reports to the public and the elected representatives of Nova Scotia through the Attorney General of Nova Scotia. It is not, however, a government department, but an independent advisor to government. The Commissioners, whose appointment process is set out in the *Act*, currently serve part-time and come from different sectors of the community. One Commissioner is a judge appointed by the Governor in Council (provincial Cabinet) after consultation with the Chief Justice of Nova Scotia and the chief judge of the court of which the judge is a member; two are community representatives appointed by Cabinet; two are appointed by the Council of the Nova Scotia Barristers' Society; and one person represents the full-time members of the Faculty of Law, Dalhousie University. One of the Commissioners must not be a graduate in law.

Mandate

The Commission's job is to review Nova Scotia law and to make recommendations for its improvement, modernization and reform. This may involve formulating new ideas and approaches to law, or proposing ways in which existing laws and the legal system can be made clearer or simpler to better serve the needs of the province. The Commission may choose a topic for law reform based upon suggestions received from government, lawyers, judges, or the community. A project may also follow a government request, generally known as a reference. Since 1991, the Commission has received six references from the Government. The references related respectively to the administrative justice system, the probate system, mental health provisions of the *Hospitals Act*, adoption information law,[2] grandparent-grandchild access, and liability for contaminated sites arising under the *Environment Act*.

The Commission does not make law in Nova Scotia; that task is performed in part by the elected Members of the House of Assembly. The Commission's reports and recommendations are, however, formally presented to the Attorney General and may result in changes to the law. Law is also made through the decisions of judges and appointed administrative decision-makers in cases that come before them.

A distinguishing characteristic of the Commission is its independence from government. Although in the past the Commission received a significant portion of funding from government, on average about one third of its money came from other sources. Government has a role in Commissioner selection, but does not choose all of the Commissioners, and no Commissioner is chosen to represent the Government. The Commission does undertake government requests for law reform projects, as far as is

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1 S.N.S. 1990, c.17, reproduced at **Appendix A**.

2 Reports on the administrative justice, probate, *Hospitals Act*, and grandparent-grandchild access projects have been completed. Following completion of background research, work on adoption information law was suspended after news in 2000 of the loss of government funding. The project was subsequently referred to a committee formed by the Minister of Community Services.

feasible, but apart from that requirement, is free to select the work it undertakes. So long as done in compliance with its object and powers under the *Act*, the Commission enjoys a free hand in terms of its activities: it may conduct meetings, hire people, perform research, publish reports, enter into cooperative arrangements with other entities, and decide how its funds are to be spent.

Law Reform Process

The Commission usually prepares two publications during the course of a project. The first publication, the ***Discussion Paper***, sets out the Commission's preliminary suggestions for reform. The purpose of the Discussion Paper is to encourage people to consider and comment on the Commission's preliminary suggestions, as well as any issues, principles, and assumptions identified as having influenced the Commission's proposals for reform.

As part of the preparations for a Discussion Paper, the Commission generally forms an ***Advisory Group***. The Advisory Group usually consists of Commission legal staff, and a number of community members, including government representatives, the judiciary, lawyers and other professionals, as well as participants from groups with interest or expertise in the topic being studied. The Group meets to identify and discuss relevant issues, as well as to propose to the Commission what should be included in a Discussion Paper.

The second publication is a ***Final Report,*** which is submitted to the Attorney General, and which is widely distributed. It contains the final recommendations of the Commission and, in some cases, a draft law. The Commission makes its final recommendations after it takes into account the responses it receives to the Discussion Paper. A Final Report is intended to provide a basis for the Government to consider and adopt the recommended reforms. The process adopted by the Commission, of seeking expert advice, consulting widely, synthesizing feedback, deliberating and report writing, is a time-consuming one. It is a process, however, which is designed to give greater weight and credibility to the final recommendations which result. The Commission does not engage in active advocacy regarding implementation of its recommendations beyond providing the recommendations to the Government and members of the public. The Commission has produced 38 project reports and 16 annual reports, which are listed at **Appendix C**. [All reports can be downloaded without cost from the Commission's website.]

Effects of Law Reform Work

Recommendations in Commission Final Reports have been brought into effect in a number of ways. One way, which perhaps comes most readily to mind, is through incorporation in new or amended legislation. On March 12th, 2008 a combined Health/Justice News Release announced the issuance of a draft *Personal Directives Act* and related discussion paper. The Government's Draft Act reflects the same issues identified by the Commission and most of the proposals recommended by the Commission in its 1995 Final Report, *Reform of the Laws Dealing With Adult Guardianship and Personal Health Care Decisions.* (The Government subsequently introduced and passed legislation based on the *Draft Act.*) In recent years, acting on proposals in respective Commission Final Reports, the Nova Scotia government has also enacted changes to provincial law dealing with testamentary wills (*Wills Act*, SNS 2006, c.49), mental health treatment and facilities (*Involuntary Psychiatric Treatment Act*, SNS 2005, c.42) and builder's liens (*Builders's Lien Act*, SNS 2004, c 14). The Commission also understands that the Government plans to act on recommendations in the Commission's Final Report on vexatious litigants. In 2007, the report's recommendations prompted legislators in Alberta to change the law in that province.

The influence of the Commission's work, however, goes beyond legislation. Certain Final Report recommendations have been implemented through government policies or protocols. Commission reports have also served an important educational function and have been used as course materials in high schools and at post-secondary institutions. Government, public interest groups, and other organizations have relied on Commission reports in order to develop awareness of issues and to focus discussions among interested people. For instance, *Law Reform Agencies*, a 2004 publication of the International Cooperation Group of the Federal Department of Justice, reflected the influence of Commission reports.

The contents of Commission reports have been referred to by a number of courts, including the Supreme Court of Canada, as part of their published case decisions. Judges have mentioned Commission reports in a number of contexts, including interim payment of damages, matrimonial property, administrative law, the jury system, powers of attorney and the legal status of the child born outside of marriage.

Nova Scotia House of Assembly members from the Liberal, New Democratic, and Progressive Conservative parties have referred with approval to Commission reports or to Commission work generally, during the course of legislative debates.

Most of the Commission's time is spent choosing, discussing, and researching law reform subjects, followed by report writing and communicating the conclusions reached. Another significant role of Commission staff is responding to inquiries about the law or about aspects of the Commission's work. The Commission does not provide legal advice, nor does it intervene in individual cases. Nonetheless, Commission staff continue to respond to inquiries by telephone, by fax, by letter, by e-mail, or in person. In replying to inquiries, Commission staff have provided legal information, copies of Commission reports as well as other documents, and contact details for government departments and other relevant institutions.

Funding

The Commission is currently funded jointly (approximately 50% each) by the Government of Nova Scotia and the Law Foundation of Nova Scotia. The Law Foundation, which funds work relating to the law, legal education, and the administration of justice, obtains its funds from the interest on lawyers' general trust accounts. The Law Foundation's objectives specifically include law reform.[3]

[3] *Legal Profession Act*, S.N.S. 2004, c. 28, s. 73.

B. THE YEAR IN REVIEW 2007-2008

Work Program and Publications:

- **Civil Procedure Rules Revision Project**

The Rules Revision Project has engaged the attention of the Commission on a priority basis since the project began in early 2004. During the past year the work on this project has largely centered as it did last year on the drafting, revision and redrafting of rules. The Commission has continued to provide legal research and the necessary related support to both the principal drafters as well as to the Steering Committee of the Rules Revision Project. By the end of the reporting period it was clear that a final draft set of rules would be printed and distributed to the judges of the Supreme Court and Court of Appeal for approval in early June. It is expected that the new rules will come into effect on January 1, 2009.

- **Grandparents-Grandchildren: Access**

The Commission began this project in January 2006 following a request from the Attorney General of Nova Scotia. The Commission conducted preliminary research, established a Project Advisory Group, and subsequently developed a Discussion Paper, which was distributed in January 2007.

Following the publication of the Discussion Paper the Commission received and considered submissions, conducted further research and published its Final Report with recommendations in April 2007. The Commission's Final Report and recommendations can be summarized as follows:

Family law issues, particularly as they relate to custody of, and access to, children, are especially difficult ones. This is no less so than when dealing with the issue of access by grandparents to their grandchildren. Fortunately, in most cases, child custody and access arrangements, including access by grandparents and others, are settled without recourse to litigation and the courts. The cases that do come before the courts, therefore, represent a very small percentage of the overall number of potential family law disputes.

Historically, grandparents had no automatic right of access to their grandchildren simply by virtue of their biological relationship. Legislation in all Canadian jurisdictions now makes it possible for grandparents to apply for custody of, or access to, their grandchildren. There is no jurisdiction in Canada, however, which provides to grandparents access as of right, which is usually referred to as an automatic or presumptive right of access.

It is incorrect to suggest that grandparents in Nova Scotia have no means to seek access to their grandchildren, in the event of a dispute over access with a custodial parent or guardian. Like

other persons interested in a child's well-being, grandparents are entitled to seek the assistance of the courts to obtain access. What grandparents in Nova Scotia do not possess is an automatic right of access, enforceable regardless of the wishes of a custodial parent, guardian, or grandchild.

In Nova Scotia, section 18(2) of the *Maintenance and Custody Act* provides that a parent or guardian or "other person with leave of the court" may apply for custody of, or access to, a child. Although there is no explicit reference to grandparents, this provision has been used by them to obtain access to their grandchildren. In Nova Scotia, an applicant must therefore first obtain the leave or permission of the court in order to bring an application. Such leave, although sometimes denied, has been granted by the Nova Scotia courts in appropriate circumstances.

Legislative provisions in all jurisdictions in Canada also mandate that courts, when deciding upon an access application, must do so on the basis of the child's "best interests." These interests are to be paramount in reaching any decision. The "best interests of the child" standard requires each case to be assessed on the basis of its own merits, as determined by careful consideration of the particular facts presented by the case.

The Commission is of the view that existing Nova Scotian legislation, when seen through the lens of the best interests of the child, currently strikes the right balance. As a result, the Commission is not in favour of creating an automatic right of access on the part of grandparents or other relatives.

Having said this, the Commission does see opportunity for reform in the area of grandparent-grandchild access.

The Law Reform Commission of Nova Scotia recommends that:

1) In order to help guide judges, parents, grandparents and other interested persons, the *Maintenance and Custody Act* be amended to provide a "best interests of the child" list of factors to consider, similar to the provisions in the *Children and Family Services Act.*

2) Section 18(2) of the *Maintenance and Custody Act* be amended to provide that an application for access may be made by a parent or a guardian or *"other person, including grandparents or other members of the child's family, with leave of the court."*

3) The leave provision in section 18(2) of the *Maintenance and Custody Act* be retained.

Work in Progress

▸ Rules Revision Project

It is anticipated that the Law Reform Commission's work on the Rules Revision Project will have been largely completed within a few months of the end of the current reporting period. The Commission is pleased to have had the opportunity during the past four years to participate in, and contribute to, improving the efficacy of the Civil Justice System in Nova Scotia.

▸ Small Claims Court Project

This is a collaborative project involving social scientists from Saint Mary's University. Since the project was initiated in the Fall of 2005 the financial jurisdiction of Small Claims Court has been increased to $25,000, which for most Nova Scotians remains a significant amount of money. During the past fiscal year a questionnaire survey was developed and mailed to some 2500 Small Claims Court users. The processing of the data from that survey was recently completed and a preliminary analysis of that data was received by the Commission after the reporting period. It is anticipated that the Commission will prepare and publish a report on the Small Claims Court project during the next fiscal year.

▸ Contaminated Sites Project

The Law Reform Commission has undertaken this project as a result of a formal request from the Attorney General pursuant to s.8 (2) (b) of the *Law Reform Commission Act*. The Commission received the *Terms of Reference* for the project in February 2008. The primary focus of the project is on issues relating to the legal liability for contaminated sites arising under the provisions of the *Environment Act*.

Contaminated sites are often referred to as "brownfields". These sites are generally underutilized, if not idle or abandoned properties. The failure to clean up or remediate such sites can have serious economic, social and health consequences to Nova Scotians. By the end of the reporting period the Commission had completed considerable preliminary background work on this project and begun to establish a project Advisory Group. It is anticipated that the Commission will issue a Discussion Paper on Contaminated Sites during the current calendar year followed by a Final Report with recommendations in the Spring of 2009.

External Activities and Relations

The Commission and its staff consider it particularly important to maintain close liaison with the practicing bar, the judiciary, the legal academic community, the Government, our Saint Mary's University partners, and others.

In April 2007, Chief Justice Kennedy of the Nova Scotia Supreme Court presented the Law Reform Commission with the Canadian Bar Association - Nova Scotia branch "Law Day" Award. In reading the citation Chief Justice Kennedy noted among other things the Law Reform Commission's significant contribution in promoting public legal education in Nova Scotia.

Commission staff have attended and participated in a number of external meetings and conferences during the past year in addition to many less formal activities. In particular the Commission's Executive Director participated in the Annual Meetings of:

- the Nova Scotia Barristers' Society
- the Federation of Law Reform Agencies of Canada
- the Uniform Law Conference of Canada

In addition the Executive Director attended various meetings and events hosted by such organizations as the Legal Information Society of Nova Scotia, the Canadian Bar Association - Nova Scotia Branch, the Nova Scotia Barristers' Society, and the Canadian Centre for Ethics and Public Affairs.

During the past year, the Executive Director met with, amongst others, the Attorney General and Deputy Attorney General of Nova Scotia, the President and Executive Director of the Nova Scotia Barristers' Society, the President of the Canadian Bar Association-Nova Scotia Branch, the Director of the British Columbia Law Institute, the Director of the Alberta Law Reform Institute, the Executive Director of the Ontario Law Commission, and the Executive Director of the Canadian Centre for Ethics and Public Affairs, and the Vice President (Academic) of Saint Mary's University.

During the reporting period Commission work was mentioned in various regional news media as well as The Lawyers Weekly, the Canadian Bar Association and Nova Scotia Barristers' Society publications, other law reform agencies' reports, and Hansard.

In June 2007, Commissioner Cromwell, the Executive Director, and the Legal Research Counsel made a presentation on the vexatious litigants project at the Supreme Court of Nova Scotia Education Seminar. The same month the Executive Director, as President of The Federation of Law Reform Agencies of Canada, hosted a Symposium in Nova Scotia with the participation of sister law reform agencies from across Canada. The Chief Justice of Nova Scotia, the Honourable Michael MacDonald, attended the opening event of this Symposium and graciously welcomed the participants. The Symposium was

possible as a result of the generous financial support of the Alberta Law Reform Institute. In October 2007, the Legal Research Counsel spoke to a class of Saint Mary's University Psychology students about Small Claims and the Commission's work in general. In November 2007, the Executive Director met with the Federal Minister of Justice, the Honourable Rob Nicholson Q.C. and also attended plenary proceedings of the International Conference on Elder Law held in Vancouver B.C.

In January 2008 the Commission was very pleased to have in attendance at a meeting of Commissioners, the Attorney General of Nova Scotia the Honourable Cecil Clarke.

The Commission acknowledges the excellent co-operation and support which it has received during the past year from the Attorney General as well as the Deputy Minister of Justice, Marian Tyson Q.C.,

Internal Administration and Organization

The Commission currently has six Commissioners. In December 2007 Justice Thomas Cromwell resigned as a Commissioner, having made an outstanding contribution to the work of the Commission since his appointment in 2002. Mr. Justice Kevin Coady of The Nova Scotia Supreme Court was appointed in December 2007, following consultation with the Chief Justice of Nova Scotia and the Chief Justice of the Supreme Court.

John E.S. Briggs continued to serve as Executive Director and General Counsel and William Laurence as Legal Research Counsel. The Commission's Administrative Assistant was Krista Tinslay, who resigned from the Commission at the end of the fiscal year in order to pursue other career opportunities. Krista joined the Commission in April of 2006 and has provided excellent and much appreciated service to the Commission throughout her tenure.

The Commission continues to benefit from the services of Professor William H. Charles, Q.C. as Special Counsel to the Commission. Professor Charles has provided valuable assistance with respect to all of the Commission projects during the past year and in particular on the Contaminated Sites Project.

Funding & Finances

From the establishment of the Commission in 1991 until 2001, the Commission received on average two thirds of its funding from the Government of Nova Scotia, and the remaining one third from the Law Foundation of Nova Scotia. At the time of its establishment, it had been purposely decided in discussions between the Government and the Law Foundation that the Commission would be funded equally by both. It was believed that with this funding arrangement the Commission would be, and would be seen to be, more independent than if it received all of its funding from Government. The original (1991) Commission budget was $300,000 (now $416,606, based on the Bank of Canada inflation calculator) of which it was expected that the Law Foundation and Government would each provide half of the required core funding.

During the fiscal years 2001 until March 31, 2004 all of the Commission funding was provided by the Law Foundation of Nova Scotia. Since that time, until the present, the Commission has been funded approximately equally by the Law Foundation and the Government of Nova Scotia.

During the reporting period, the Commission received core funding in the amount of $147,425 from the Law Foundation, and $147,425 from the Department of Justice.

The Commission's financial statement for the year ending 31 March 2008 is attached to this report as **Appendix B**.

The Commission continued to operate during the current fiscal year within its available resources. The year began with an accumulated surplus, (including accrued project funds of $24,250) totaling $29,835. The fiscal year ended with a surplus of $10,576, which included $6700 of accrued project funding, leaving a net surplus of $3,876.

C. Law - Justice - and Democracy

"History shows that a nation which neglects the ordinary care of its laws is neglecting something which is very important to its national well-being.[4]

This year Nova Scotians commemorate the 250th anniversary of representative government in Nova Scotia with the first elected assembly of its kind in Canada. The evolution of parliamentary democracy as we know it today in Canada thus had its beginnings in Nova Scotia in 1758. As we celebrate our history it is perhaps instructive to reflect on some of the continuing requirements for a vibrant and healthy democracy.

The rule of law is the bedrock principle of democracy. Respect for the law and its institutions is, however, essential to the maintenance of that principle. Access to the *forums* of justice is similarly a necessary prerequisite to maintaining the rule of law.

Reform of the law is equally, a vitally important aspect of democratic government. It is essential to the health of any justice system that it have an effective means to renew and reform itself. Law reform is thus a central thread running through and connecting respect for the law, access to justice, and the rule of law.

Experience in Nova Scotia and elsewhere suggests that law reform is best carried out as a collaborative enterprise which engages the participation of legislators, legal, judicial, and academic communities, interested groups, and members of the public. While independent law reform agencies are only one of a number of participants they have the potential to make a unique and valuable contribution to the process of law reform and are a proven, cost effective, means of complimenting the important and necessary legislative work carried out by parliamentarians. The Civil Procedure Rules Revision Project - which at the end of this reporting period was virtually complete - represents just such a collaborative law reform project. Indeed, the work of The Rules Revision Project was greatly advantaged by the enormous *pro bono* contributions of so many individuals. The Project also benefitted very significantly from the generous sharing of the work and experience of a sister agency - the Alberta Law Reform Institute - which had itself begun a major rules of court project in 2001.

The principal aim of this collaborative law reform effort has been to develop new civil procedure rules which are efficient, effective, clear and fair. Such rules should help to reduce delays, lessen costs, and lead to more satisfactory results, thereby improving access to justice. Major issues of concern in our civil justice system today - namely those of costs, delays and complexity - are common to all Canadian jurisdictions. Clearly the quality of our civil justice system is ultimately of potential importance to all Nova Scotians. It is because of the Law Reform Commission's belief that the Civil Procedure Rules of

[4] Chairman of the English Law Commission, as quoted in Handford, "The Changing Face of Law Reform" (1999) 73 Aus.L.J.503 at 518

Nova Scotia are vitally important to the health of our justice system that in 2004 it agreed to participate in, and to facilitate, the work of this important public project. The Commission is pleased to have had the opportunity to contribute to this very worthwhile endeavour.

In summary the 2007 - 2008 fiscal year was a very positive one in which the Commission continued to make a significant contribution to the work of the Civil Procedure Rules Revision Project. In addition, the Commission conducted preliminary research and completed an extensive Background Paper on the Contaminated Sites Project as well as completing or advancing work on several other projects. The Commission is encouraged to believe that its support in the community has been enhanced during the past year. We begin the fiscal year 2008 - 2009 with renewed optimism and continuing enthusiasm for our work.

D. COMMISSIONERS AND STAFF

Commissioners

Anthony L. Chapman, President
Commissioner (2004 -)
Mr. Chapman was appointed to the Commission by the Council of the Nova Scotia Barristers' Society in June 2004. He has been a member of the Nova Scotia Bar since 1980. A partner in the Halifax office of the law firm Cox & Palmer, Mr. Chapman specializes in corporate/commercial law, real property law, secured transactions, and environmental law. Mr. Chapman was appointed President in 2007.

Thomas A. Cromwell
Commissioner (2002 - 2007)
Mr. Cromwell was appointed to the Commission in March 2002. Mr. Cromwell was called to the Ontario Bar in 1979 and to the Nova Scotia Bar in 1984. In 1997, he was appointed to the Court of Appeal of Nova Scotia. Prior to his judicial appointment, he practiced law in Ontario and taught at the faculties of law at both Queen's and Dalhousie Universities. Mr. Cromwell resigned from the Commission in December 2007.

Kevin Coady
Commissioner (2007 -)
Mr. Coady was appointed to the Law Reform Commission of Nova Scotia by Order in Council in December 2007. Mr. Coady was called to the Nova Scotia Bar in 1981, and appointed to the Supreme Court of Nova Scotia in 2003. Prior to his judicial appointment, he practiced law in Nova Scotia with Coady Filliter and taught Criminal Law at Dalhousie University.

Diana Ginn
Commissioner (2002 -)
Ms. Ginn was appointed to the Commission in June of 2002. She is an associate professor at the Faculty of Law, Dalhousie University, teaching in the areas of property law, administrative law, health law and women in the law. Ms. Ginn specializes in research and writing in these subject areas, and has published numerous articles.

Darlene Jamieson
Commissioner (2002 -)
Ms. Jamieson was appointed to the Commission by the Council of the Nova Scotia Barristers' Society in June of 2002. She has been a partner in the law firm Merrick Jamieson Sterns Washington & Mahody since 1998 with preferred areas of practice being civil litigation, including insurance, banking, construction and employment law. She has held numerous and varied posts with the Nova Scotia Barristers' Society.

John L. McMullan
Commissioner (2006 -)
Dr. McMullan was appointed to the Commission in February 2006. Dr. McMullan is a Professor of Sociology and Criminology and the former Chairperson and Criminology Graduate Studies Coordinator at Saint Mary's University. He is the author of several books and numerous articles on business crime, law enforcement, social regulation, media, law and justice, and gambling and social policy. Dr. McMullan is a multiple research award holder and he has served on many university, academic, professional, and government councils and boards. He is currently interested in the role of public inquiries and truth, and the legal context of new forms of permitted gambling in Canada.

E. Arleen Paris
Commissioner (2002 -)
Ms. Paris was appointed to the Commission in January 2002. She is a retired medical laboratory technologist, who worked with the Nova Scotia Department of Agriculture and Fisheries, as well as at hospitals in Nova Scotia and New Brunswick. A resident of Truro, Ms. Paris is involved in a number of community activities.

Staff

John E.S. Briggs
Executive Director & General Counsel
Mr. Briggs, a graduate of Carleton, Queens and Oxford universities, was called to the Bar in 1974. He has been Executive Director of the Commission since 2001, and also acts as Outside Counsel to the Federal Minister of Justice on alleged miscarriage of justice cases. Mr. Briggs is a practicing member of the bar in Nova Scotia and Ontario, and is the President of the Federation of Law Reform Agencies of Canada.

William H. Laurence
Legal Research Counsel
Mr. Laurence joined the Commission in September, 1998. He has a B.A. (Hon.) from Carleton University, an LL.B. from McGill University as well as an LL.M. and M.L.I.S. from Dalhousie University. He worked as a legal researcher and practiced law before joining the Commission.

Krista Tinslay
Administrative Assistant
Ms. Tinslay resigned from the Commission in March 2008 following two years of exemplary service.

William H. Charles, Q.C.

Special Counsel

Professor Charles has acted as Special Counsel to the Commission since 2001. He is a graduate of Dalhousie (where he was Dean of Law 1979-1985), Concordia, Harvard and Michigan universities. Professor Charles was the first President of the Law Reform Commission, and held that position from 1991 until 1995. He serves on a number of Boards and Councils in Nova Scotia.

Appendix A.

The Law Reform Commission Act

CHAPTER 17 OF THE ACTS OF 1990

An Act to Establish an Independent Law Reform Commission

Short title

1 This Act may be cited as the *Law Reform Commission Act.* 1990, c.17, s.1.

Interpretation

2 In this Act, "Commission" means the Law Reform Commission of Nova Scotia. 1990, c.17, s.2.

Law Reform Commission of Nova Scotia

3 There is hereby established a body corporate to be known as the Law Reform Commission of Nova Scotia. 1990, c.17, s.3.

Object of Commission

4 The object of the Commission is to review the law of the Province and any matter relating to law in the Province and to make recommendations for improvement, modernization and reform including, without limiting the generality of the foregoing, recommendations for

(a) development of new approaches to, and new concepts of, law that serve the changing needs of society and of individual members of society;

(b) clarification and simplification of the law;

(c) removal of provisions of the law that are outdated;

(d) improvement of the administration of justice;

(e) review of judicial and quasi-judicial procedures. 1990, c.17, s.4.

Composition of Commission

5 (l) The Commission shall be composed of not fewer than five nor more than seven commissioners who may be appointed, either on a full-time basis or a part-time basis, as follows:

(a) two members of the Nova Scotia Barristers' Society appointed by the Council of the Society;

(b) a judge of a court of the Province, appointed by the Governor in Council after consultation with the Chief Justice of Nova Scotia and the chief judge of the court of which the judge is a member;

(c) a full-time member of the Faculty of Law of Dalhousie University appointed by the Governor in Council after consultation with the Dean of the Faculty;

(d) a person who is not a graduate in law appointed by the Governor in Council;

(e) where the Governor in Council determines that the Commission is to be composed of more than five commissioners, one or two persons appointed by the Governor in Council.

Term of office of commissioner

(2) Each commissioner holds office for a term of three years, except that one of the first commissioners appointed by the Council of the Nova Scotia Barristers' Society and one of the first commissioners appointed by the Governor in Council shall be appointed for a term of two years.

Ceasing to be a commissioner

(3) A person ceases to be a commissioner where

(a) that person fails to attend three consecutive regular meetings of the Commission, except where the Commission by resolution excuses the absences; or

(b) the composition of the Commission ceases to comply with this Act as a result of the person ceasing to be a person described in clause (a), (b), (c) or (d) of subsection (1).

Casual vacancies

(4) Where a person ceases to be a commissioner for any reason other than the expiration of that person's term of office, the Governor in Council or the Council of the Nova Scotia Barristers' Society, as the case may be, shall appoint a person for the unexpired portion of the term.

Re-appointment of commissioner

(5) A commissioner whose term of office has expired may be re-appointed.

Expiry of term of office

(6) A commissioner whose term of office expires continues to hold office until a successor is appointed.

Vacancy

(7) A vacancy in the membership of the Commission does not impair the ability of the remaining members to act. 1990, c.17, s.5.

President of Commission

6 The commissioners shall appoint one of the members of the Commission to be the President of the Commission. 1990, c.17, s.6.

Remuneration and expenses

7 The President and other members of the Commission may be paid such remuneration and shall be paid such travelling and living expenses as may be determined by the Governor in Council. 1990, c.17, s.7.

Powers of Commission

8 (1) The Commission may

(a) receive and consider any proposals for the reform of the law that may be made to it by any person;

(b) initiate, carry out and direct such studies and research as are necessary to properly carry out its object;

(c) publish papers, studies or other documents prepared by or for the Commission;

(d) co-operate or enter into agreements with any organization that undertakes projects relating to the object of the Commission within or outside the Province;

(e) with the concurrence of the Attorney General and to the extent that the Commission is able to do so without, in its opinion, impairing its ability to carry out its object or duties, provide information, research material and study results and make recommendations to departments, boards and agencies of the Government of the Province concerned with the improvement, modernization or reform of laws;

(f) regulate its proceedings and provide generally for the conduct and management of its affairs;

(g) do such things and take such measures as the Commission considers advisable for the achievement of its object, including the making of by-laws.

Duties and further powers of Commission

(2) The Commission

(a) may make use of technical and other information, advice and assistance from departments, boards and agencies of the Government of the Province;

(b) shall undertake, at the request of the Attorney General, in a manner as determined by the Commission, the examination of particular laws or branches of the law and make recommendations for their improvement, modernization and reform. 1990, c.17, s.8.

Meetings of Commission

9 The Commission shall meet at least four times in each year. 1990, c.17, s.9.

Personnel

10 (1) An Executive Director and such persons as are required for the administration of this Act and the regulations shall be appointed by the Commission, in accordance with the *Civil Service Act.*

Function of Executive Director

(2) The Executive Director has the management, direction, control and administration of the day-to-day operations of the Commission.

Advisers

(3) Notwithstanding subsection (1), the Commission may engage, upon such terms and conditions as the Commission deems fit, the services of such professional persons, technical persons and experts to advise the Commission as the Commission deems necessary for the carrying out of its object. 1990, c.17, s.10.

Appropriation of money

11 (1) Money appropriated by the Legislature for the purpose of this Act shall be paid out by the Attorney General.

Law Reform Commission Fund

(2) The Commission shall maintain an account to be under the control and management of the Commission, to be known as the Law Reform Commission Fund, into which the Attorney General may pay from time to time any sum of money appropriated and into which may be paid any sum of money contributed as a grant or gift by any person, organization or body.

Use of money in Fund

(3) Except where a stipulation or condition is expressed in relation to a sum of money paid into the Law Reform Commission Fund, the money in the Fund may be used by the Commission for the purpose of this Act. 1990, c.17, s.11.

Annual report to Attorney General

12 (1) The Commission shall report from time to time to the Attorney General and shall make an annual report to the Attorney General on the activities of the Commission.

Tabling of annual report

(2) The Attorney General shall table the annual report of the Commission in the Assembly, if the Assembly is then sitting and, if the Assembly is not sitting, within fifteen days of its next sitting.

Other report

(3) Where the Commission reviews, considers or inquires into a matter, the Commission shall make a report to the Attorney General with respect to that matter at the conclusion of its deliberations.

Publication of report

(4) The Commission may publish a report made pursuant to this Section. 1990, c.17, s.12.

Repeal

13 Chapter 251 of the Revised Statutes, 1989, the *Law Reform Act*, is repealed. 1990, c.17, s.13.

Proclamation

14 This Act comes into force on and not before such days as the Governor in Council orders and declares by proclamation. 1990, c.17, s.14.

Proclaimed	-	January 22, 1991
In force	-	February 1, 1991

Appendix B.

Financial Report for the 2007-2008 Fiscal Year

LAW REFORM COMMISSION OF NOVA SCOTIA
Balance Sheet as at 3/31/08

ASSETS			
CURRENT ASSETS			
Petty cash			25.00
Bank Operating Account	55,700.47		
Cashable GICs	150,000.00		
T-Bill Account	(0.00)		
Total Cash			205,700.47
HST Receivable			4,766.31
GST Receivable			85.04
TOTAL CURRENT ASSETS			210,576.82
FIXED ASSETS			
Computer Equipment		19,059.16	
Accum Computer Equipment		-19,059.16	
Net Office Equipment			(0.00)
TOTAL FIXED ASSETS			(0.00)
TOTAL ASSETS			210,576.82
LIABILITIES			
CURRENT LIABILITIES			
Vacation Payable			0.00
UIC Payable		0.00	
CPP Payable		0.00	
Income Tax Payable		0.00	
Receiver General Payable			0.00
Accrued income			200,000.00
TOTAL CURRENT LIABILITIES			200,000.00
TOTAL LIABILITIES			200,000.00
EQUITY			
SURPLUS			
Surplus Beginning of Year			29,835.95
Surplus Current Year			(19,259.13)
ACCUMULATED SURPLUS			10,576.82
TOTAL EQUITY			10,576.82
LIABILITIES AND EQUITY			210,576.82

LAW REFORM COMMISSION OF NOVA SCOTIA
Income Statement as at 3/31/08

REVENUE			
OPERATING INCOME			
Dept. of Justice Nova Scotia		147,425.00	
NS Law Foundation contribution		147,425.00	
Interest income		25.16	
TOTAL CONTRIBUTIONS		294,875.16	
TOTAL REVENUE		294,875.16	
EXPENSE			
ADMINISTRATIVE EXPENSES			
Wages	203,924.02		
EI expense	2,938.86		
CPP expense	5,712.10		
Group insurance expense	7,696.86		
TOTAL PERSONNEL RELATED		220,271.84	
Advertising		0.00	
Commissioners fees & expenses		415.74	
Electrical expense		1,086.60	
Meeting costs		1,238.48	
Library		3,872.37	
Accounting fees		0.00	
Membership dues		4,462.80	
Computer software/supplies/repairs		1,535.95	
Internet		1,365.40	
Staff expenses		2,354.00	
Rent	26,588.09		
Office equipment rental	3,053.99		
Insurance	1,014.00		
TOTAL PREMISES RELATED		30,656.08	
Office supplies	1,479.05		
Photocopy/printing	5,232.84		
Postage & courier	2,089.56		
Telephone expense	5,619.28		
Travel/conference/workshop	4,994.74		
Staff Development	2,295.00		
Office Equip Maintenance	55.00		
TOTAL OFFICE RELATED		21,765.47	
Bank charges		134.00	
Miscellaneous		649.23	
Contract Research		17,510.94	
HST paid on purchases		4,765.35	
GST paid on purchases		84.98	
TOTAL ADMINISTRATION			312,169.23
Adjustments			
Prior Year Corrections			1,965.06
Adjustment Total			1,965.06
TOTAL EXPENSE			314,134.29
NET INCOME		(19,259.13)	

Appendix C.

List of Publications (by project) 1991-2008

Law Reform Commission Publications

(As of March 31, 2008)

Administrative Justice System

(Agencies, Boards and Commissions - ABC Report)

- *Agencies Boards and Commissions: The Administrative Justice System* (Discussion Paper, January 1996
- *Reform of the Administrative Justice System in Nova Scotia* (Final Report, January 1997)

Adult Guardianship/Advance Health Care Directives

- *Adult Guardianship in Nova Scotia* (Discussion Paper, September 1993)
- *Living Wills in Nova Scotia* (Discussion Paper, November 1994)
- *Adult Guardianship and Personal Health Care Decisions* (Final Report, November 1995)

Custody and Access

- *Grandparent-Grandchild: Access* (Discussion Paper, January 2007)
- *Grandparent-Grandchild: Access* (Final Report, April 2007)

Domestic Violence

- *Violence in a Domestic Context* (Discussion Paper, March 1993)
- *From Rhetoric to Reality, Ending Domestic Violence in Nova Scotia* (Final Report, February 1995)

Enduring Powers of Attorney

- *Enduring Powers of Attorney in Nova Scotia* (Discussion Paper, June 1998)
- *Enduring Powers of Attorney in Nova Scotia* (Final Report, September 1999)

Enforcement of Maintenance Obligations

- *Enforcement of Maintenance Obligations* (Discussion Paper, July 1992)
- *Enforcement of Maintenance Obligations* (Final Report, November 1992)

Future of the Law Reform Commission

- *A Continuing Need for Law Reform: The Case for the Law Reform Commission of Nova Scotia* (Report, December 2001)

Interim Payment of Damages

- *Interim Payment of Damages* (Discussion Paper, January 2000)
- *Interim Payment of Damages* (Final Report, February 2001)

Jury System

- *Reform of the Jury System in Nova Scotia* (Discussion Paper, May 1993)
- *Reform of the Jury System in Nova Scotia* (Final Report, June 1994)

Matrimonial Property

- *Matrimonial Property in Nova Scotia: Suggestions for a New Family Law Act* (Discussion Paper, April 1996)
- *Reform of the Law Dealing with Matrimonial Property in Nova Scotia* (Final Report, March 1997)

Mechanics' Lien Act

- *Builders' Liens in Nova Scotia: Reform of the Mechanics' Lien Act* (Discussion Paper, January 2003)
- *Builders' Liens in Nova Scotia: Reform of the Mechanics' Lien Act* (Final Report, June 2003)

Mental Health Provisions

- *Mental Health Provisions of the Hospitals Act* (Discussion Paper, September 2000)
- *Mental Health Provisions of the Hospitals Act* (Final Report, February 2002)

Mortgage Foreclosure and Sale

- *Mortgage Foreclosure and Sale* (Discussion Paper, July 1997)
- *Mortgage Foreclosure and Sale* (Final Report, September 1998)

Privity of Contract

- *Privity of Contract (Third Party Rights)* (Discussion Paper, March 2004)
- *Privity of Contract (Third Party Rights)* (Final Report, August 2004)

Probate

- *Probate Reform in Nova Scotia* (Discussion Paper, March 1998)
- *Probate Reform in Nova Scotia* (Final Report, March 1999)

Status of the Child Born Outside Marriage

- *The Legal Status of the Child Born Outside of Marriage in Nova Scotia* (Discussion Paper, August 1993)
- *The Legal Status of the Child Born Outside of Marriage in Nova Scotia* (Final Report, March 1995)

Structured Settlements

- *Court-ordered Structured Settlements for Personal Injury Damage Awards* (Background Paper, August 2004)

Tortfeasors

- *Joint Tortfeasors & the Common Law "Release Bar Rule"* (Final Report, July 2002)

Vexatious Litigants

- *Vexatious Litigants* (Discussion Paper, November 2005)
- *Vexatious Litigants* (Final Report, April 2006)

Wills Act

- *Reform of the Nova Scotia Wills Act* (Discussion Paper, July 2003)
- *Reform of the Nova Scotia Wills Act* (Final Report, November 2003)

Sixteen Annual Reports

- April 1, 1991 - March 31, 1992
- April 1, 1992 - March 31, 1993
- April 1, 1993 - March 31, 1994
- April 1, 1994 - March 31, 1995
- April 1, 1995 - March 31, 1996
- April 1, 1996 - March 31, 1997
- April 1, 1997 - March 31, 1998
- April 1, 1998 - March 31, 1999
- April 1, 1999 - March 31, 2000
- April 1, 2000 - March 31, 2001
- April 1, 2001 - March 31, 2002
- April 1, 2002 - March 31, 2003
- April 1, 2003 - March 31, 2004
- April 1, 2004 - March 31, 2005
- April 1, 2005 - March 31, 2006
- April 1, 2006 - March 31, 2007